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EXAMINER	
BEISNER, WILLIAM H	
ART UNIT	PAPER NUMBER
1744	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/764,175	VANERDEWYK, MICHAEL Z.	
	Examiner	Art Unit	
	William H. Beisner	1744	

-- The MAILING DATE of this communication appears on the cover she t with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *17 and 18* is/are allowed.

6)☒ Claim(s) *1-5 and 7-16* is/are rejected.

7)☒ Claim(s) *6* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Curreen (GB 2 124 864).

The reference of Curreen discloses a container which is made of a heat sealable tea-bag paper which has a grading between 21-27.5 grams per square meter (See page 1, lines 31-55). The instant claims recite a container which is a sealed pouch made of a porous material wherein the pores are sized and configured to allow microorganisms to pass through the pores at a rate of no more than 0.5 g/day/cm^2 when said pouch is exposed to a stationary fluid environment. While the text of the specification is silent as to the size of the pores, the thickness of the porous material and/or the porosity of the material, the specification discloses that a porous material which meets the required rate of releasing microorganisms (claims 1-3) is a 26-gram heat sealed fibrous paper (See page 5, lines 10-25). The reference of Curreen meets the instant claim limitations because it discloses a paper weight of 27.5 grams which is greater than 26 grams an would provide a rate which is less than that associated with a 26 gram paper and would inherently meet the instant claim limitations. While the preamble of the claim recites that the device is intended to be used to release microorganisms, the body of the claim merely recites a

"tea-bag" container made of a 26-gram heat sealed fibrous paper. The reference of Curreen discloses a container of the same structure which meets the instant claim language.

With respect to claim 4, the paper is inherently capable of being biodegraded. If not, the material would not require reinforcing as discussed on page 1, lines 35-37.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 7-10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curreen (GB 2 124 864).

The reference of Curreen has been discussed above.

The above claims differ by reciting that the dispensing container is contained within a dispensing vessel.

The reference of Curreen discloses that while the container is suitable for a fishhook, the container can be used in a crayfish pot (dispensing vessel).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to employ the holding container of Curreen in a pot as suggested by Curreen for the known and expected result of providing an alternative means recognized in the art for achieving the same result, contacting the holding container with respect to a liquid environment.

The reference as modified above meets the claim limitations of claims 8 and 9 for the same reasons as set forth in the 102(b) rejection above.

With respect to claims 10 and 16, crab or crayfish pots (cages) include open channels and sink to the bottom of body of water in which they are deployed.

5. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curreen (GB 2 124 864) in view of Sasaki et al.(US 4,630,634).

The reference of Curreen has been discussed above.

The above claims differ by reciting that the dispensing vessel includes a top-floating portion which is threadably attached to the dispensing vessel.

The reference of Sasaki et al. discloses a known device for positioning a dispensing vessel in a liquid environment with a floating portion threadably attached to the dispensing portion of the device (See Figure 1).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the device of Curreen within a floating device as suggested by Sasaki et al. for the known and expected result of providing an alternative means recognized in the art to achieve the same result, positioning a dispensing device in a liquid environment. The floating vessel could be used in a specific location of a body of water as a means to attract fish to the specific area in which the floating holder is maintained. The material of construction of the dispensing structure would have been obvious based on considerations such as materials which are cheap to manufacture and resistance to the environment to which it will be exposed.

With respect to claim 14, the contents of the bait holder of Curreen can be considered nutrients as recited in claim 14 in the absence of further positively recited language to further define nutrients.

Allowable Subject Matter

6. Claims 17 and 18 are allowed.

7. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter:

With respect to both claims 6 and 17, while the prior art of record teaches and/or suggests a container made of a porous material which is capable of dispensing microorganisms at the claimed rate, the prior art of record fails to teach or fairly suggest employing a container of the claimed construction in combination with microorganisms and nutrients whereby the microorganisms may be cultured within the container and controllably released into the fluid environment.

Response to Arguments

9. Applicant's arguments filed 27 June 2003 have been fully considered but they are not persuasive.

With respect to the 35 USC 102(b) rejection of record, Applicant argues, see pages 2-4 of the response dated 23 June 2003, that the rejection is improper because the weight of the paper employed is not necessarily an indicator of the size and configuration of pores associated

therewith. Applicant further states that the instant specification discloses the use of a relatively long fiber paper material that desirably meshes in such a fashion so as to provide a pore configuration suitable for allowing a controlled release rate of microorganisms therethrough. Applicant concludes that the reference of Curreen contains no specific disclosure of the pore size and configuration of the container material utilized and therefore is improper for the Examiner to conclude that the container material of Curreen provides the flow-through functionality of the claimed pouch material merely due to the paper weight density of Curreen.

In response, the Examiner is of the position that the use of the disclosed paper weight density of Curreen is proper for the following reasons. While the instant specification recites a desired release rate associated with the container, the specification is silent as to the pore size associated with this release rate. The only guidance the instant specification provides to one of ordinary skill in the art when making and using the claimed device besides the intended release rate is that the container is manufactured out of a long fiber heat sealed paper of 26 gram density weight (See page 5). Other than this disclosure of the material of manufacture, the specification is silent as to the pore size of the container. As a result, the instant specification only discloses the configuration of the container material, the instant specification clearly discloses the use of a 26 gram long fiber heat sealed paper. As stated in the rejection of the claims above, the reference of Curreen discloses a material configuration that is a heat sealable tea-bag paper with a density in the range of 21-27.5 grams. Note tea-bag paper is a long fiber paper and the reference discloses the use of a density of paper that is the same or higher than that of the instant specification. For these reasons, the container of the reference of Curreen inherently meets the claimed dispensing device of the instant claims.

Applicant further argues that the reference of Curreen is silent as to the claimed permeation rate.

In response, the Examiner agrees.. However, for the reasons set forth in the rejection above and response to arguments above, the Examiner is of the position that the material of construction of the Curreen container inherently provides the permeation rate recited in the claims.

Applicant further argues that the reference of Curreen teaches away from the claimed permeation rate because the container of Curreen is intended to retain the contained bait and not release the bait. One of ordinary skill would not anticipate the use of the material of the instant invention which provides a specific permeation rate.

In response, while the material of the Curreen reference is intended to retain the bait material, this is irrelevant to the inherency rejection above because the material is the same as that instantly claimed and would be capable of releasing microorganisms at the claimed rate if used in combination with microorganisms rather than the disclosed bait material of the reference of Curreen. Note while one of ordinary skill in the art would not be motivated to employ the material of Curreen to dispense microorganisms at the claimed rate, one of ordinary skill in the art would recognize that the contained disclosed by Curreen and that disclosed in the specification of the instant invention are made of the same material and would inherently provide the claimed permeation rate.

With respect to the 35 USC 103 rejections of record, Applicant merely argues that the modification of the references as suggested in the rejections does not cure the deficiencies of the reference of Curreen stated previously.

In response, the 35 USC 103 rejections of record were not intended to cure the deficiencies of the reference of Curreen in terms of the permeation rate. Rather, the 35 USC 103 rejections of record were made to address additional claim limitations that were not specifically disclosed by the reference of Curreen.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 703-308-4006. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:40am to 4:10pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

William H. Beisner
Primary Examiner
Art Unit 1744

WHB